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No. A-460

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

October Term 1986

BRICE ACHORD, ET AL

Respondent

versus

CITY OF BATON ROUGE, ET AL

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

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55 pp

QUESTIONS PRESENTED

1. Since the holding of this Court in *Garcia v. San Antonio Metropolitan Transit Authority*, 105 S.Ct. 1005 (1985), are State courts free to ignore the provisions of the Code of Federal Regulations interpreting federal wage and hour laws now applicable to public employees?

2. Are those provisions of the Code of Federal Regulations which define the method of reducing monthly wages to hourly rates for purposes of minimum wage calculations applicable to Louisiana's "Minimum Wage" statutes for firemen?

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No. A-460

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

BRICE ACHORD, ET AL

Respondent

versus

CITY OF BATON ROUGE, ET AL

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

Petitioner prays for a writ of certiorari to review the judgment of the Supreme Court of Louisiana in this case.

OPINIONS BELOW

The denial of Application for Writ of Certiorari or Review to the Supreme Court of the State of Louisiana is reproduced in Appendix A. The Opinion of the Court of Appeal for the First Circuit, State of Louisiana, reported at 489 So.2d 1371 (La. App. 1st Cir. 1986) is reproduced in Appendix B. The Judgment and Amended Judgment of the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana are reproduced in Appendix C. The Written Reasons for Judgment and Supplemental Written Reasons for Judgment of the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana, are reproduced in Appendix D.

JURISDICTION

The Judgment of the Court of Appeal for the First Circuit, State of Louisiana was entered on May 28, 1986. The Application for a Writ of Certiorari or Review was timely filed with the Louisiana Supreme Court on June 23, 1986. This application was denied on September 19, 1986. The Jurisdiction of this Court to review said denial is invoked under 28 U.S.C. §1257(3).

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

29 U.S.C. §206

See Appendix E

29 CFR §778.113(b)

§778.113(b) Salary for period other than work week.

> Where the salary covers a period longer than a work week, such as a month, it must be reduced to its work week equivalent. A monthly salary is subject to translation of its equivalent weekly wage by multiplying by 12 (the number of months) and dividing by 52 (the number of weeks). A semi-monthly salary is translated into its equivalent weekly wage by multiplying by 24 and dividing by 52. Once this weekly wage is arrived at, the regular rate of pay will be that indicated above (§778.113(a)). The regular rate of an employee who is paid a regular monthly salary of $1040, or regular semi-monthly salary of $520 for 40 hours a week is thus found to be $6.00 per hour. Under regulations of the Administrator, pursuant to the authority given to him in Section 7(g) (3) of the Act, the parties may provide that the regular rates shall be determined by dividing the monthly salary by the number of working days in the month and then by the number of hours of the normal or regular work day. Of course, the resultant rate in such a case must not be less than the statutory minimum wage.

La. Rev. Stat. Ann. 33:1992(9) (West 1986)

§1992 Minimum Salaries

> The minimum monthly salaries of fireman in municipalities having a population of twelve thousand or more and of all parish and fire protection district paid fireman, including salaries payable out of the avails of any special tax provided by the Constitution of Louisiana for increasing the pay of firemen, shall be in accordance with the following schedule, and such salaries shall be paid semi-monthly not later than the fifth and the twentieth day of each calendar month:
>
> > (9) A fire alarm operator or dispatcher, or any other person doing this type of work for the fire department, shall receive a minimum monthly salary of not less than twenty-five percent above that of a fireman.

La. Rev. Stat. Ann. 33:1994 and 1999 (West 1986).

See Appendix F.

STATEMENT OF THE CASE

The City of Baton Rouge is required to pay its fire communications officers ("fco's") a minimum monthly salary of not less than twenty-five percent above that of firefighters. La. Rev. Stat. Ann. 33:1991(9) (West 1986). Virtually every aspect of a fireman's pay is computed on an hourly basis including total monthly salary, overtime, vacation pay, sick pay, severance pay, holiday pay and disciplinary pay reductions. While comparable-level fco's and firefighters receive the same monthly salary, the fco's monthly salary is based on a 42 hour work week where the firefighters monthly salary is based on 56 hour work week. If one takes into consideration the number of hours worked and the hourly rate of pay of the two classes of fireman, it is obvious that fco's are paid better than twenty-five percent more than firefighters.

Respondents' suit was originally brought as a mandamus action for payment of alleged back wages. Thus the Court was required to determine the proper method of calculation of fireman's wages. The District Court rendered written reasons for judgment in favor of plaintiffs on January 16, 1985, ruling that hours worked and hourly rate of pay should not be considered in determining if fco's are paid twenty-five percent more than firefighters. Instead the Court looked only to the total "monthly salary." On appeal, the Court of Appeals for the First Circuit, State of Louisiana, affirmed the District Court's findings and dismissed the City's appeal with written reasons. Petitioner then applied to the Supreme Court of Louisiana for Writs of Certiorari or Review of the decision of the Court of Appeals on June 23, 1986. On September 19, 1986, the Supreme Court denied the City's petition without assigning reasons. It is from this denial which Petitioner now seeks review.

REASONS FOR GRANTING THE WRIT

By refusing to consider the hourly rate of pay for the purpose of comparing the monthly salaries of fco's and firefighters, the State Courts have ignored the provisions of the Code of Federal Regulations interpreting federal wage and hour laws now applicable to public employees. Petitioners submit that since *Garcia v. San Antonio Metropolitan Transit Authority*, 105 S.Ct. 1005 (1985), state courts must defer to the Fair Labor Standards Act, specifically 29 U.S.C. §206 and the Code of Federal Regulations, specifically 29 CFR 778.113(b) in computing the minimum wages of local fireman. 29 CFR §778.113(b) requires that where salaries are set on a monthly basis they should be reduced to hourly rates of pay in order to accurately compute minimum wages. The lower State Courts in Louisiana have refused to acknowledge this obligation under federal law.

Regulations published in the Code of Federal Regulations "have the force and effect of law, and all persons affected thereby are charged with legal notice of their provisions." *Moody v. United States*, 774 F.2d (C.A. 6th Cir. 1985). When this Court reversed its prior decision of *National League of Cities v. Usery*, 426 U.S. 833 (1976) and made federal wage and hour laws applicable to local government employees, it likewise compelled public entities to follow the accompanying federal regulations. Thus state courts can no longer ignore those regulations which interpret the establishment of minimum wages.

The wages fixed for all Baton Rouge firemen (including both fco's and firefighters) are the product of collective bargaining between the City and the fireman's union. Those wages are negotiated and set at an *hourly* rate of pay which is thereafter approved by the local governing authority and included in the City's pay plan for public employees. The pay plan contains a figure which is the hourly rate and then

totals the monthly salary based on the number of hours to be worked. At the trial of this case, the union's bargaining representative and chief negotiator testified that "monthly wages" mean nothing, but that the hourly rate of pay is the standard upon which all firemen's wages are fixed.

Two statutes companion to the one at issue here, and also contained in that section entitled "minimum wages", both mandate "reducing average monthly salary to an hourly scale" to compute maximum hours and holiday pay. Those statutes are La.Rev.Stat.Ann. 33:1994 and 1999 (West 1986), respectively. Thus, there is clear statutory precedent in Louisiana for utilizing the same regulatory scheme as outlined in the Code of Federal Regulations for reducing monthly salary to an hourly rate to determine if minimum wages are being paid.

The State Courts' refusal to break down monthly pay to hourly rates for determining if the twenty-five percent premium had been met by the City resulted in a deficiency judgment rendered against the City for approximately $300,000.00. On the other hand, had the Courts considered the hourly rate of pay which was negotiated by the fireman's union and stated in the City's pay plan for firemen, it would have found that fco's were in fact paid *more* than the twenty-five percent premium required by the statute and no deficiency would have been granted.

CONCLUSION

The refusal of the Louisiana Supreme Court to grant Petitioners' Writ Application and to reverse the lower State Courts represented a violation of federal wage and hour law. Since the *Garcia* decision, state courts are not free to ignore federal regulatory provisions which interpret minimum wage provisions. Section 778.113(b) of 29 CFR states that "monthly salaries" should be reduced to "hourly rates of pay" in order to accurately compute minimum wages. Had the State Courts in this case reduced the monthly salary of fco's and firefighters to an hourly rate they would have concluded that the fco's were paid at least twenty-five percent more than their firefighter counterparts, in accordance with the minimum wage provisions. Because the State Courts erred in this respect, this Writ Application is meritorious and should be granted.

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PROOF OF SERVICE

I, Victor A. Sachse, III, counsel for petitioner herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 17th day of January, 1987, I served the foregoing Petition for Writ of Certiorari, and its appendices, on Brice B. Achord, B. E. Arceneaux, A & A Watts, Herman Garner, Gervais Sharp, Veronica Stephens, Howard Robinson, Peggy Colomb, Rhonda Robique, D. N. Page, respondents in connection with this Application for Writ of Certiorari, by mailing three copies thereof to his counsel of record, R. Bruce MacMurdo, Steffes & MacMurdo, 8966 Interline Avenue, Suite D, Baton Rouge, Louisiana 70809.

January 17, 1985

Victor A Sachse, III

Victor A. Sachse, III

APPENDICES

APPENDIX A

THE SUPREME COURT
OF THE STATE OF LOUISIANA

BRICE ACHORD, ET AL

versus

CITY OF BATON ROUGE

NO. 86-C-1243

IN RE: Baton Rouge City of; Screen, Pat Mayor; Dufour, L. Paul; Castello, Marvin J.; Applying for Writ of Certiorari and/or Review; to the Court of Appeal, First Circuit, Number CA-005986; Parish of East Baton Rouge 19th Judicial District Court Div. "H" Number 282, 223

September 19, 1986

Denied.

JAD
PFC
WFM
JLD
JCW
HTL

COLE, J., would grant the writ.

Supreme Court of Louisiana
September 19, 1986

/s/ Frans J. Labranche, Jr.
Clerk of Court
For the Court

APPENDIX B

Brice ACHORD, et al.

v.

CITY OF BATON ROUGE, et al.

No. CA 86 0059.

Court of Appeal of Louisiana,
First Circuit.

May 28, 1986.

Writ Denied Sept. 19, 1986.

The Nineteenth Judicial District Court, Parish of East Baton Rouge, Daniel W. LeBlanc, J., granted writ of mandamus in favor of employees, and city appealed. The Court of Appeal, Carter, J., held that: (1) statute required court to compare monthly salary of dispatchers and fire fighters, and (2) employees were entitled to recover back wages for period of three years.

Reversed in part, affirmed in part, rendered and remanded with instructions.

1. **Municipal Corporations KEY 199**

LSA-R.S. 33:1992(9), governing salaries of fire dispatchers, requires comparison of monthly, not hourly, wages of dispatchers and fire fighters.

2. **Statutes KEY 190**

Court is bound to apply law as written by legislature, where law is clear and free from ambiguities.

3. **Limitation of Actions KEY 6(1)**

Statutes of limitations are accorded retroactive application unless doing so would operate unconstitutionally to deprive party of vested rights.

4. **Limitation of Actions KEY 6(1)**

LSA-C.C. art. 3494, which lengthened the prescriptive period for actions to recover back wages, could be applied to action filed after effective date seeking wages owed from before effective date.

5. **Labor Relations KEY 199**

Under LSA-R.S. 33:1992(9), governing salaries of dispatchers, dispatchers are entitled to salary 25% higher than fire fighters of same level, not 25% higher than highest paid fire fighter.

6. **Municipal Corporations KEY 199**

Assistant chief dispatcher was not entitled to salary 50% higher than fire fighters as assistant chief but, rather, to salary 25% higher than fire fighters as dispatcher where fire chief testified that assistant chief dispatcher was not his assistant and indicated there were number of employees in department who outranked him, but did not have technical title of assistant or deputy chief. LSA-R.S. 33:1992(6).

R. Bruce Macmurdo, Baton Rouge, for plaintiffs-appellees Brice Achord, B.E. Arceneaux, A.A. Watts, Herman Garner, Gervais Sharp, Veronica Stephens, Howard Robinson, Peggy Colomb, Rhonda Roubique and D.N. Page.

Murphy J. Foster, III, Baton Rouge, for defendants-appellants City of Baton Rouge, Pat Screen, Mayor of the City of Baton Rouge, L. Paul Dufour, Treasurer for the City of Baton Rouge, Marvin Castello, Fire Chief.

Before LOTTINGER, CARTER and CRAIN, JJ.

CARTER, Judge.

This is an appeal from a judgment of the trial court granting a writ of mandamus ordering defendants to pay plaintiffs an increased salary, as well as compensatory back wages.

The present action was filed on October 18, 1984, by Brice Achord and several other fire communications officers (dispatchers) employed by the Baton Rouge Fire Department against the City of Baton Rouge (City), Pat Screen, L. Paul Dufour and Marvin J. Castello, the mayor, treasurer and fire chief of the City, respectively. Plaintiffs alleged they were entitled under LSA-R.S. 33:1992(9) to receive an increase in salary to a level twenty-five percent above the salaries received by firefighters and compensatory back wages for a period of three years. An additional demand was made by Assistant Chief Fire Communication Officer Brice Achord for an increase in salary to a level fifty percent above that of firefighters.

Following a hearing on November 30, 1984, this matter was taken under advisement. On November 4, 1985, the trial court rendered judgment in favor of plaintiffs ordering defendants to increase the salaries of dispatchers to a level

twenty-five percent above that received by firefighters at corresponding step levels. Defendants were also ordered to pay compensatory back wages to plaintiffs for the period from January 1, 1983, until compliance with the court's order, with legal interest from the date of judicial demand until paid. Brice Achord's demand for a salary increase to a level fifty percent above that received by firefighters was rejected. On November 22, 1985, an amended judgment was rendered, correcting a mathematical error made in the original opinion. From this judgment, defendants have appealed, raising the following issue:

1. Did the trial court err in refusing to consider hourly wages in determining whether the salary of dispatchers was at least twenty-five percent above that of firefighters?

In an answer to this appeal, plaintiffs raised the following issues:

1. Whether the enactment of LSA-Civ. Code art. 3494 (by Act 173 of 1983, effective January 1, 1984) extending the prescriptive period for actions to recover wages from one to three years should be given retroactive application.

2. Whether the lowest ranked dispatcher is entitled to a salary twenty-five percent above that received by the highest ranked fireman.

3. Is plaintiff Brice Achord an "assistant chief" within the meaning of LSA-R.S. 33:1992(6), so as to entitle him to receive a salary at least fifty percent above that received by firefighters?

B-5

DEFENDANTS' APPEAL

ISSUE ONE

[1] Plaintiffs' claim for an increase in salary and compensatory back wages are based on LSA-R.S. 33:1992(9), which provides as follows:

> A fire alarm operator or dispatcher, or any other person doing this type of work for the fire department, shall receive a minimum **monthly** salary of not less than twenty-five percent above that of a fireman. (Emphasis added)

A wide variance exists between the hours worked by dispatchers and firefighters, the former normally working 42 hours per week and the latter 56 hours per week. The differential between the current hourly wages received by dispatchers and firefighters exceeds twenty-five percent. However, when the base monthly salaries of each are compared, the salaries of dispatchers are not twenty-five percent above that received by firefighters. In opposition to plaintiffs' demands, defendants argue that hourly wages, rather than monthly salaries, must be compared in determining compliance with this provision.

In support of their position, defendants rely on several federal cases holding that hourly wages must be used to determine compliance with the Federal Fair Labor Standards Act (F.L.S.A.), 29 U.S.C. §201, et seq. and on *Garcia v. San Antonio Metro. Transit Authority*, 469 U.S. 528, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985), a recent case in which the Supreme Court held the F.L.S.A. is applicable to municipal employees. Defendants argue their position is further supported by the fact hourly wages were a major factor in contract

negotiations between the firemen's union and the City.

Each of these arguments is without merit. *Garcia* and the federal cases relied upon by defendants are not relevant to the present case, which involves the interpretation of a state statute totally unrelated to the F.L.S.A. Further, whatever the basis of the negotiations between the parties, it sheds no light on and can not alter the clear and unambiguous wording and proper interpretation of La.R.S. 33:1992(9).

We believe the result reached by the trial court on this issue was correct. The provision in question clearly states the monthly salary of persons doing the work of dispatchers shall be at least twenty-five percent above the salary received by firefighters. Thus, the hourly wages received by the respective parties are not pertinent to the inquiry before this Court. The question is whether the **monthly** salary received by dispatchers exceeds the **monthly** salary received by firefighters by at least twenty-five percent. Accordingly, the trial court was correct in disregarding hourly wages and comparing only the monthly salaries of the respective parties in determining compliance with LSA-R.S. 33:1992(9). This is especially the case when the salary schedule of the City is set forth in monthly amounts (rates).

[2] Despite the reservations this Court has as to the wisdom of LSA-R.S. 33:1992(9), we are bound to apply it as written by the legislature. Where the law is clear and free from ambiguities, we are constrained to apply the law as written.

Good arguments can be made that matters pertaining exclusively to local government bodies might best be left to local governments. This, however, is a matter that addresses itself to the legislative branch of government.

In any event, the record clearly reflects both dispatchers and firemen are paid by the City on a monthly basis (with hourly wages being used to calculate compensation only for certain limited purposes such as severance pay, sick leave and overtime pay), and the monthly salary of the dispatchers is not at least twenty-five percent above that received by firefighters as required by LSA-R.S. 33:1992(9).

ANSWER TO APPEAL

ISSUE ONE

[3, 4] In an answer to defendants' appeal plaintiffs argue the trial court erred in refusing to apply LSA-C.C. art. 3494 retroactively so as to allow them to recover back wages for a period of three years. Prior to the enactment of LSA-C.C. art. 3494, the prescriptive period for an action to recover salaries and wages was one year.[1] LSA-C.C. art. 3494, effective January 1, 1984, lengthened the prescriptive period for such actions to three years.

Upon filing the instant suit on October 18, 1984, plaintiffs requested recovery of back wages for a period of three years. However, the trial cout denied this request, concluding that LSA-C.C. art. 3494 could not be applied retroactively since it lengthened rather than shortened the applicable prescriptive period. We disagree with the trial court's conclusion for the following reasons.

It is well established that in the absence of language to the contrary, statutes of limitation are generally accorded retroactive application since they are remedial in nature. *Lott v.*

---

1. LSA-C.C. art. 3534 (prior to repeal by implication by Act 173 of 1983).

Haley, 370 So.2d 521 (La. 1979). However, statutes of limitations are not accorded retroactive application where doing so would operate unconstitutionally to deprive a party of vested rights. *Id.* The extension of the prescriptive period for actions to recover wages from one to three years does not disturb any vested rights. *Carpenter Local U. No. 1846 v. Pratt-Farnsworth*, 609 F.Supp. 1302, 1306 (E.D. La. 1984). Although most cases in our jurisprudence deal with situations in which prescriptive periods are reduced rather than lengthened, we see no reason for this distinction to make a difference in the rule of retroactive application. See *Barfield v. Barfield*, 483 So.2d 1085 (La.App. 2d Cir. 1986). The expiration of a prescriptive period merely bars a party's remedy, it does not extinguish the cause of action itself as does peremption. *Pounds v. Schori*, 377 So.2d 1195, 1198 (La. 1979); *Schulin v. Service Painting Co. of Louisiana*, 479 So.2d 939, 944 (La.App. 1st Cir. 1985), writ denied, 481 So.2d 634 (La. 1986). Therefore, the legislative extension of a prescriptive period has the effect of removing the bar to a party's judicial remedy. Accordingly, plaintiffs are entitled to recover back wages for a period of three years under LSA-C.C. art. 3494.[2]

ISSUE TWO

[5] Under the City's present plan, dispatchers are classified within the fire department as either Fire Communications Officers I, II or III, Assistant Chief Fire Communications Officer or Chief Fire Communications Officer. The City's plan provides for seven step increases within each of these classifications. There are also seven step increases within the classification of firefighter. Advancement from one step to another within a particular classification is based upon length of service.

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2. If inequities are created, recourse again is with the legislature.

Plaintiffs allege the lowest paid dispatcher (FCO I, Step 1) is entitled under LSA-R.S. 33:1992(9) to receive a salary at least twenty-five percent above that of the highest paid firemen (Fireman, Step 7). To the contrary, the trial court concluded dispatchers were only entitled to receive a salary twenty-five percent greater than that of a fireman at a corresponding step level. We conclude the trial court was correct.

There is nothing in LSA-R.S. 33:1992(9) which mandates a different result. The language of this provision merely provides the salary of a dispatcher shall be at least twenty-five percent greater than that of **a fireman**. The result reached by the trial court is logically consistent with the language of LSA-R.S. 33:1992(9).

Plaintiffs' reliance upon *Hamphill v. City of Bogalusa*, 417 So.2d 462 (La.App. 1st Cir. 1982), is misplaced. In *Hemphill*, this court held firedrivers in the Bogalusa Fire Department were entitled to receive a salary fifteen percent above that of the highest paid firefighter. However, *Hemphill* involved interpretation of a contractual provision specifically providing firedrivers were to receive salaries "15% above the highest Firefighter" and is, therefore, clearly distinguishable from the present case.

ISSUE THREE

[6] Plaintiff Brice Achord argues he falls within the contemplation of LSA-R.S. 33:1992(6) which provides that "assistant chiefs and deputy chiefs" are to receive a salary at least fifty percent above that received by firemen. Although Achord is technically classified as an "assistant chief of fire communications," the trial court concluded he did not come within the contemplation of this provision. We agree.

LSA-R.S. 33:1992(1)-(10) require that there be certain minimum differentials between the salaries received by various fire department personnel and that received by firemen. The fifty percent minimum differential required between the salaries of assistant or deputy chiefs and firemen is the largest provided in this provision. Obviously, therefore, LSA-R.S. 33:1992(6) envisions assistant or deputy chiefs high in the hierarchy of the department who act directly as assistants to the fire chief.

The record clearly reflects Achord does not fall within this category. Fire Chief Castello testified Achord was not his assistant. Further, he indicated there were a number of employees in the department who outranked Achord, but did not have the technical title of assistant or deputy chief.

DECREE

For the above reasons, the judgment of the trial court is affirmed insofar as it held dispatchers are entitled to a monthly salary at least twenty-five percent above that received by firefighters. That portion of the trial court's judgment holding that plaintiffs are entitled to recovery for only one year of back wages is reversed, and it is hereby ordered that plaintiffs be allowed recovery of back wages for a period of three years from the date their petition was filed. This matter is remanded to the trial court for determination of the amount due to each plaintiff in accordance with the views expressed herein. The judgment of the trial court is affirmed in all other respects.

The costs of this appeal in the amount of $541.23 are to be paid by the City of Baton Rouge.

REVERSED IN PART; AFFIRMED IN PART; RENDERED AND REMANDED.

WEST KEY NUMBER SYSTEM

APPENDIX C

BRICE ACHORD, ET AL

VS.

CITY OF BATON ROUGE, ET AL

NUMBER 282, 223, DIV. "H"

19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

JUDGMENT

This cause came on for hearing, pursuant to plaintiffs' petition for mandamus, on November 30, 1984. Present were R. Bruce Macmurdo for plaintiffs and Murphy J. Foster, III for defendants, City of Baton Rouge, Pat Screen, L. Paul Dufour, and Marvin J. Castello.

The Court, having considered the pleadings, evidence and the law applicable thereto:

IT IS ORDERED that there be judgment herein in favor of Brice Achord, B. E. Arceneaux, A. A. Watts, Herman Garner, Gervais Sharp, Veronica Stephens, Howard Robinson, Peggy Colomb, Rhonda Roubique and D. N. Page, and against the City of Baton Rouge, Pat Screen, Mayor of the City of Baton Rouge, L. Paul Dufour, Treasurer for the City of Baton Rouge, and Marvin J. Castello, Fire Chief of the City of Baton Rouge, mandating defendants to pay plaintiffs their salaries as fire communication officers for the Baton Rouge Fire Department in accordance with the written reasons for judgment and supplemental written reasons for

judgment previously handed down in this matter, to-wit: Fire Communication Officer (FCO) I's are to receive 25 per cent greater salaries than firefighters at a corresponding step level; a FCO II step 1 is to receive the same amount as an FCO I step 3 and the remaining steps of FCO II are to be increased over FCO II, step 1, by the same increment as is currently employed for each step increase within this range of classification; an FCO III, step 1, is to receive the same amount as an FCO II, step 3, and the remaining steps of FCO III are to be increased over FCO II, step 1, by the same increment currently employed for each step increase within this range of classification; the Assistant Chief Communication Officer, step 1, is to receive the same amount as an FCO III, step 3, and the remaining steps within Assistant Chief CO are to be increased over Assistant CO, step 1, by the same increment currently employed for each step increase within this range of classification and the Chief Communication Officer, step 1, is to be paid the same amount as an Assistant CO, step 5, and the remaining steps within Chief CO are to be increased over Chief CO, step 1, by the same increment currently employed for each step increase within this range of classification all as is set forth in the supplemental reasons for judgment dated September 11, 1985.

IT IS FURTHER ORDERED that the defendants are to pay plaintiffs in back wages the difference between what plaintiffs actually received in salary and the sum which they should have been paid according to the written reasons for judgment and supplemental written reasons for judgment, from January 1, 1983 until compliance is reached with the salary amounts set forth in the written reasons, said sums or back wages being stipulated as being the following amount through September 30, 1985:

Brice Achord	$ 13,450.80
B. E. Arceanux	$ 12,734.75
A. A. Watts	$ 12,186.63
Herman Garner	$ 13,450.80
Gervais Sharp	$ 11,714.25
Veronica Stephens	$ 12,734.75
Howard Robinson	$ 12,454.25
Peggy Colomb	$ 9,519.50
Rhonda Roubique	$ 12,734.75
D. N. Page	$ 13,450.80

Interest on the back wages has been stipulated to run from October 18, 1984, the date of judicial demand.

IT IS FURTHER ORDERED that the Assistant Chief Communication Officer is not an assistant or deputy chief within the intendment of La.R.S. 33:1992(6) and accordingly the demand that the assistant chief communication officer be paid 50 per cent more than a fireman is rejected.

JUDGMENT READ AND SIGNED in Chambers at Baton Rouge, Louisiana, on this 4th day of Nov., 1985.

/s/ Daniel W. LeBlanc
JUDGE,
19th JUDICIAL DISTRICT COURT

FILED
Nov. 4, 1985

Approved: /s/ Patricia Kennedy
DY. CLERK OF COURT

/s/ R. Bruce Macmurdo
R. BRUCE MACMURDO of Steffes &
Macmurdo, 8966 Interline Avenue,
Suite D, Baton Rouge, La. 70809
Telephone: (504) 923-0251
Attorney for Plaintiffs

/s/ Murphy J. Foster, III
MURPHY J. FOSTER, III
Breazeale, Sachse & Wilson
Post Office Box 3197,
B.R., LA 70812 (504) 387-4000
Attorneys for Defendants

A TRUE COPY

/s/ Patricia Kennedy
DY. CLERK OF COURT

C-5

BRICE ACHORD, ET AL

VS.

CITY OF BATON ROUGE, ET AL

NUMBER 282, 223, DIV. "H"

19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

AMENDED JUDGMENT

This cause came on for hearing, pursuant to plaintiffs' petition for mandamus, on November 30, 1984. Present were R. Bruce Macmurdo for plaintiffs and Murphy J. Foster, III for defendants, City of Baton Rouge, Pat Screen, L. Paul Dufour, and Marvin J. Castello.

The Court, having considered the pleadings, evidence and the law applicable thereto and having considered plaintiffs' motion to amend the judgment previously entered herein to correct an error of calculation;

IT IS ORDERED that there be judgment herein in favor of Brice Achord, B. E. Arceneaux, A. A. Watts, Herman Garner, Gervais Sharp, Veronica Stephens, Howard Robison, Peggy Colomb, Rhonda Roubique and D. N. Page, and against the City of Baton Rouge, Pat Screen, Mayor of the City of Baton Rouge, L. Paul Dufour, Treasurer for the City of Baton Rouge, and Marvin J. Castello, Fire Chief of the City of Baton Rouge, mandating defendants to pay plaintiffs their salaries as fire communication officers for the Baton Rouge Fire Department in accordance with the written reasons for judgment and supplemental written reasons for

judgment previously handed down in this matter, to-wit: Fire Communication Officer (FCO) I's are to receive 25 per cent greater salaries than firefighters at a corresponding step level; an FCO II step 1 is to receive the same amount as an FCO I step 3 and the remaining steps of FCO II are to be increased over FCO II, step 1, by the same increment as is currently employed for each step increase within this range of classification; an FCO III, step 1, is to receive the same amount as an FCO II, step 3, and the remaining steps of FCO III are to be increased over FCO II, step 1, by the same increment currently employed for each step increase within this range of classification; the Assistant Chief Communication Officer, step 1, is to receive the same amount as an FCO III, step 3, and the remaining steps within Assistant Chief CO are to be increased over Assistant CO, step 1, by the same increment currently employed for each step increase within this range of classification and the Chief Communication Officer, step 1, is to be paid the same amount as an Assistant CO, step 5, and the remaining steps within Chief CO are to be increased over Chief CO, step 1, by the same increment currently employed for each step increase within this range of classification all as is set forth in the supplemental reasons for judgment dated September 11, 1985.

IT IS FURTHER ORDERED that the defendants are to pay plaintiffs in back wages the difference between what plaintiffs actually received in salary and the sum which they should have been paid according to this judgment and the written reasons for judgment and supplemental written reasons for judgment, from January 1, 1983 until compliance is reached with the salary amounts set forth in the written reasons, said sums or back wages being stipulated as being the following amount through September 30, 1985:

Brice Achord	$13,450.80
B. E. Arceneaux	$12,734.75
A. A. Watts	$12,186.63
Herman Garner	$13,450.80
Gervais Sharp	$11,714.25
Veronica Stephens	$12,734.75
Howard Robinson	$12,454.25
Peggy Colomb	$12,198.25
Rhonda Roubique	$12,734.75
D. N. Page	$13,450.80

Interest on the back wages has been stipulated to run from October 18, 1984, the date of judicial demand.

IT IS FURTHER ORDERED that the Assistant Chief Communication Officer is not an assistant or deputy chief within the intendment of La. R.S. 33:1992(6) and accordingly the demand that the assistant chief communication officer be paid 50 per cent more than a fireman is rejected.

JUDGMENT READ AND SIGNED in Chambers at Baton Rouge, Louisiana, on this 22nd day of Nov., 1985.

/s/ Daniel W. LeBlanc
JUDGE,
19th JUDICIAL DISTRICT COURT

CERTIFIED TRUE COPY
Nov. 20, 1985

19th JUDICIAL DISTRICT
EAST BATON ROUGE PARISH, LA.
FILED
1985 NOV. 20 PM 2:57

/s/ Mindy Cleveland
DEPUTY CLERK OF COURT

A TRUE COPY

/s/ Patricia Kennedy
DY. CLERK OF COURT

APPENDIX D

BRICE ACHORD, ET AL.

VS.

CITY OF BATON ROUGE, ET AL.

NUMBER 282, 223, DIV. "H"

19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

WRITTEN REASONS FOR JUDGMENT

This is a mandamus action brought by Baton Rouge fire communication officers seeking an order that the City of Baton Rouge pay them an increased salary and compensatory back wages in accordance with La. R.S. 33:1992(9). This Court finds that the officers are entitled to the increased salary and back wages and renders judgment in their favor.

MINIMUM SALARY

La. R.S. 33:1992(9) provides:

> "a fire alarm operator or dispatcher, or any other person doing this type of work for the fire department, shall receive a minimum monthly salary of not less than 25 percent above that of a fireman."

Defendants have argued that the number of hours worked per week by fire communication officers (42 hours) and that worked by firefighters (56 hours) must be considered in

determining whether the fire communication officers earn 25 percent more than their firefighter counterparts. Defendants contend that the requirement of La. R.S. 33:1992(9) have been met because the fire communication officers earn 33 percent more per hour than firefighters earn. This argument overlooks the clear mandate of the statute that a dispatcher receive 25 percent more *monthly* salary than a firefighter. Supplemental pay and overtime pay received must be included as part of the monthly salary for purposes of applying the 25 percent differential. *Hemphill v. City of Bogalusa*, 417 So.2d 462 (La.App. 1st Cir. 1982).

Plaintiffs claim that the applicable base to be used in computing the pay differential is that of the highest paid firefighter. Plaintiff's reliance on the *Hemphill* case in support of their contention is misplaced, since in that case, the Court was interpreting not only La. R.S. 33:1992, but also a collective bargaining contract which specifically stated that the plaintiff firedrivers were to receive a salary 15 percent greater than the highest firefighters. In the absence of such specific contractual language, this Court rejects the argument that La. R.S. 33:1922 requires that a fire communication officer be paid 25 percent more than the highest paid firefighter.

This Court holds instead that the salaries of fire communication officers must be 25 percent greater than the salaries of firefighters at the corresponding step level. Thus, the lowest paid fire communication officer (i.e., Step 1) must receive a salary of at least 25 percent more than the lowest paid firefighter (i.e., Step 1). Likewise, fire communication officers at the highest pay level (i.e., Step 7) must receive a salary at least 25 percent greater than a firefighter at the same step level.

One of the plaintiffs, Brice Achord, has alleged that he is Assistant Chief Fire Communication Officer and is therefore entitled to a salary of at least 50 percent more than that earned by firefighters, pursuant to La. R.S. 33:1992(6), which provides:

> "assistant chiefs and deputy chiefs shall receive a minimum monthly salary of not less than 50 percent above that of a fireman."

This statute clearly intends to apply to assistants and deputy chiefs to the Chief of the Fire Department, not to employees further down the "totem pole" who may have a job title of "Assistant Chief". The testimony heard at trial of this matter shows without a doubt that Achord is not one of the assistant chiefs envisioned by the statute. Achord is therefore entitled to earn only 25 percent over that of a firefighter, just as other fire communication officers are, rather than the 50 percent differential granted to assistant chiefs.

COMPENSATORY BACK WAGES

Plaintiffs filed suit on April 1, 1984, seeking recovery for unpaid wages. Plaintiffs contend that the three year prescriptive period of La. Civ. Code Art. 3494 applies to the case. Defendants argue that the code article applies only after the January 1, 1984 effective date enacting the article and that La. Civ. Code Art. 3534, providing a one year prescriptive period for the recovery of wages for workmen, is applicable prior to the effective date of Art. 3494.

The retroactive application of the three year prescriptive period would operate to permit recovery during a period for which recovery had already been barred by the prior one year prescription. While it is true that prescriptive statutes are

remedial legislation and therefore ordinarily operate retroactively, the jurisprudence permitting this retroactive operation have all dealt with the shortening of prescriptive periods, not the lengthening of them, as is present in the instant case. This Court rules that retroactive application of the three year prescription would result in unfairness to the parties and therefore holds that plaintiff is entitled to sue for the previous three year period, but only if it was not already barred by the previous one year limitations period. Plaintiff therefore can recover compensatory back wages from January 1, 1983, until the present date.

Judgment will be signed accordingly.

Baton Rouge, Louisiana, this 16th day of January, 1985.

/s/ Daniel W. LeBlanc
JUDGE, DIVISION H

FILED
Jan. 16, 1985

/s/ Terri Maples
DY. CLERK OF COURT

A TRUE COPY

/s/ Terri Maples
DY. CLERK OF COURT

/s/ R. Bruce Macmurdo

/s/ Murphy J. Foster, III

January 16, 1985

/s/ Terri Maples
DEPUTY CLERK OF COURT

D-5

BRICE ACHORD, ET AL

VERSUS

CITY OF BATON ROUGE, ET AL

NUMBER 282, 223, DIVISION "H"

19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

SUPPLEMENTAL WRITTEN REASONS FOR JUDGMENT

These supplemental written reasons for judgment are issued to clarify the prior order of the Court concerning the implementation of La. R.S. 33:1992(9). The operative paragraph of the prior written reasons for judgment is as follows:

> This Court holds instead that the salaries of fire communication officers must be 25 per cent greater than the salaries of fire fighters at the corresponding step level. Thus, the lowest paid fire communication officer (i.e., Step 1) must receive a salary of at least 25 per cent more than the lowest paid fire fighter (i.e., Step 1). Likewise, fire communication officers at the highest pay level (i.e., Step 7) must receive a salary at least 25 per cent greater than a fire fighter at the same step level.

This holding was intended to be applied consistently to all of the steps in each classification. Thus, not only would FCO I, Step 1's earn 25 per cent more than a Fire Fighter, Step 1's, and FCO I, Step 7's earn 25 per cent more than Fire Fighter,

Step 7's; but also Chief Communication Officer, Step 7's should receive 25 per cent more than their comparably situated counterpart, District Chief, Step 7.

The problem of implementation of this order is that the promotional ladder for fire communication officers (FCO's) is not parallel to that of fire fighters. For example, the promotional classification for fire fighters in the civil service system is (1) Fire Fighters, (2) Fire Equipment Operators, (3) Fire Captain, and (4) District Chief, while that of FCO's is (1) FCO I, (2) FCO II, (3) FCO III, (4) Assistant Chief CO, and (5) Chief CO. Under each classification, there are seven grades or step levels to contend with.

The ultimate determination of allocation of the civil service pay plan is that of the City Council; however, the Court has a duty to see that any such pay plan is in accord with the mandatory legislative directive of La. R.S. 33:1992(9). If possible, the Court should interpret both the state statute and the city pay plan in such a manner as to do the least violence to each.

The City of Baton Rouge has adopted a plan of civil service pay ranges for each of the various classifications of FCO. That plan involves a conscious determination by the Council of the increase in pay of the various steps and the interrelation of the steps among the promotional classification of FCOs. The Court accepts the outline of this plan as an expression of the legislative will of the City Council of the City of Baton Rouge. Such plan provides for the following raises in pay in the various steps in the promotional classifications of FCO:

(Figure 1)

Civil Service Step Increase Amounts 4-1-84

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
FCO I	(Base)	42	48	49	53	54	58
FCO II	(prior level) (step 3)	49	53	54	58	59	66
FCO III	(prior level) (step 3)	54	58	59	66	68	74
Asst Chief CO	(prior level) (step 3)	59	66	68	74	84	84
Chief CO	(prior level) (step 5)	84	84	90	92	102	100

In order to merge the pay rises of the city pay plan with the mandate of La. R.S. 33:1992(9), it is necessary to take the Step 1 pay level of the fire fighter (listed as $1,194.00 on the City Parish Pay Plan), and increase that amount by 25 per cent to determine the entry level Step 1 base salary of an FCO I. This yields a starting salary of an FCO I, Step 1 of $1,493.00. Ideally, the Court could then implement the pay level increases noted on Figure 1 and determine the proper pay to be allocated to the various positions. However, the result must be checked against the mandatory pronouncement of La. R.S. 33:1992(9) that the fire communication operator "shall receive a minimum monthly salary of not less than 25 per cent above that of a fireman." Unfortunately, a strict application of this formula to the city pay plan does

not result in an FCO I, Step 7 receiving 25 per cent more monthly salary than a similarly situated Fire Fighter, Step 7. Accordingly, each step in the entry level position of FCO I must be adjusted to correspond to a 25 per cent increase over the same step level of a fire fighter. This results in the appropriate pay range for the step levels of an FCO I as follows:

(Figure 2)

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
FCO I	1493	1545	1605	1666	1732	1800	1872

At this point, the Court notes that the pay base of an FCO II, Step 1 is the same as that for an FCO I, Step 3. Similarly, an FCO III, Step 1 earns the same as the FCO II, Step 3, as does an Assistant Chief CO, Step 1, as the FCO III, Step 3. The only deviation from this pattern is that the Chief CO, Step 1 pay level is the same as the Assistant Chief CO, Step 5. Again, the Court accepts this established system as an expression of the legislative will of the City Council and merges that will with the statute so as to make the salary levels in accordance with state law. The result of the merger of the state law with the city pay plan yields the following indicated salary levels for the various positions and steps:

(Figure 3)

Adjusted FCO I With Applied Base

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
FCO I	1493	1545	1605	1666	1732	1800	1872
FCO II	1605	1654	1707	1761	1819	1878	1944
FCO III	1707	1761	1819	1878	1944	2012	2086
Asst Chief CO	1819	1878	1944	2012	2086	2170	2254
Chief CO	2086	2170	2254	2344	2436	2538	2638

The pay levels outlined by Figure 3 are adopted by the Court as the appropriate base salary levels which should have been paid in accord with LSA-R.S. 33:1992(9).

Alternate calculation proposals were submitted on behalf of both the plaintiffs and defendants. The Court rejects these proposals due to the fact that they do not strictly comply with the mandatory language of the statute. The amount of back pay to be awarded to each plaintiff must be calculated based upon the pay plan as outlined in Figure 3 herein, together with such supplemental and longevity pay as would have been earned at the higher pay rate. The amount which results is what each plaintiff should have been paid. From that, the city should subtract the amount which each individual plaintiff actually received, resulting in the amount of the judgment.

Technically, judicial interest would be due on the amount of unpaid wages from the date the initial payment should have been made until actually paid; however, the plaintiffs have simplified this task by waiving their right to receive all but judicial interest on the total amount of back pay from date of judicial demand until paid. Even so, judicial interest does not begin to accrue on the payments due after the date of judicial demand until the date that those payments actually became due. Therefore, let a judgment be prepared, and the Court will sign a judgment consistent with the procedures outlined herein.

Baton Rouge, Louisiana, this 11th day of September, 1985.

/s/ Daniel W. LeBlanc
Daniel W. LeBlanc
JUDGE, DIV. "H"
19th JUDICIAL DISTRICT COURT

FILED
Sep. 11, 1985

/s/ Patricia Kennedy
DY. CLERK OF COURT

APPENDIX E

THE CODE OF THE LAWS OF THE UNITED STATES OF AMERICA

TITLE 29 – LABOR

CHAPTER 8. FAIR LABOR STANDARDS

[§§206-219 of 29 USCS, Chapter 8, are contained in this volume]

§206. Minimum wages

(a) Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) not less than $2.65 an hour during the year beginning January 1, 1978, not less than $2.90 an hour during the year beginning January 1, 1979, not less than $3.10 an hour during the year beginning January 1, 1980, and not less than $3.35 an hour after December 31, 1980, except as otherwise provided in this section;

(2)–(4) [Unchanged]

(5) if such employee is employed in agriculture, not less than the minimum wage rate in effect under paragraph (1) after December 31, 1977.

(b) Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) applies) who in any workweek is engaged in commerce or in the

production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this Act by the Fair Labor Standards Amendments of 1966 [29 USCS §§203, 206, 207, 213, 214, 216, 218, 255], title IX of the Education Amendments of 1972, or the Fair Labor Standards Amendments of 1974, wages at the following rate: Effective after December 31, 1977, not less than the minimum wage rate in effect under subsection (a)(1).

(c) (1) The rate or rates provided by subsection (a)(1) of this section shall be superseded in the case of any employee in Puerto Rico or the Virgin Islands only for so long as and insofar as such employee is covered by a wage order (A) heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 5 [29 USCS §205], and (B) which prescribes a wage order rate which is less than the wage rate in effect under subsection (a)(1).

(2) (A) Each wage order rate under a wage order described in paragraph (1) which on December 31, 1977, is at least $2 an hour shall, except as provided in paragraph (3), be increased–

(i) effective January 1, 1978, by $0.25 an hour or by such greater amount as may be recommended by a special industry committee under section 8, and

(ii) effective January 1, 1979, and January 1 of each succeeding year, by $0.30 an hour or by such greater amount as may be so recommended by such a special industry committee.

(B) Each wage order rate under a wage order described in paragraph (1) which on December 31, 1977, is less than $2 an hour shall, except as provided in paragraph (3), be increased–

(i) effective January 1, 1978, by $0.20 an hour or by such greater amount as may be recommended by a special industry committee under section 8, and

(ii) effective January 1, 1979, and January 1 of each succeeding year–

(I) until such wage order rate is not less than $2.30 an hour, by $0.25 an hour or by such greater amount as may be so recommended by a special industry committee, and

(II) if such wage order rate is not less than $2.30 an hour, by $0.30 an hour or by such greater amount as may be so recommended by a special industry committee.

(C) In the case of any employee in agriculture who is covered by a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 5 [29 USCS §205], to whom the rate or rates prescribed by subsection (a)(5) of this section would otherwise apply, and whose hourly wage is increased above the wage rate prescribed by such wage order by a subsidy (or income supplement) paid, in whole or in part, by the government of Puerto Rico, the applicable increases prescribed by subparagraph (A) or (B) shall be applied to the sum

of the wage rate in effect under such wage order and the amount by which the employee's hourly wage is increased by the subsidy (or income supplement) above the wage rate in effect under such wage order.

(3) If the wage rate of an employee is to be increased under this subsection to a wage rate which equals or is greater than the wage rate under subsection (a)(1) which, but for paragraph (1) of this subsection, would be applicable to such employee, this subsection shall be inapplicable to such employee and the applicable rate under subsection (a)(1) shall apply to such employee.

(4) Each minimum wage rate prescribed by or under paragraph (2) shall be in effect unless such minimum wage rate has been superseded by a wage order (issued by the Secretary pursuant to the recommendation of a special industry committee convened under section 8) fixing a higher minimum wage rate.

APPENDIX F

§1994. Maximum hours

A. The maximum hours of work required of firemen covered by this Sub-part in cities having a population of thirteen thousand or more and that of all parish and fire protection district paid firemen in any calendar week shall be sixty hours. However, in case of emergencies, they may be required to work in excess of the maximum hours. For each hour so worked in excess of sixty hours in any calendar week a fireman shall be paid at the rate of one and one-half times his usual salary, to be determined by reducing his average monthly salary to an hourly scale.

B. The maximum hours of work required by persons employed or engaged full time by municipalities or municipal fire departments or by parish or parish fire departments or fire protection districts as operators of fire alarm systems in any one calendar week shall be forty-two hours. As amended Acts 1950, No. 239, §1; Acts 1952, No. 242, §1; Acts 1962, No. 132, §1.

C.(1) Notwithstanding any other provisions of this Section to the contrary, the city of Lafayette, in order to maximize fire protection, may establish a work shift cycle as provided in R.S. 33:1994(D), which requires a person employed as a fireman to work in excess of sixty hours in any calendar week.

(2) Each fireman shall be paid at the rate of one and one-half times his usual salary for all overtime hours worked during a shift cycle.

(3) The total hours worked by each fireman during an entire work shift cycle shall be divided by the number of

weeks in the shift cycle to determine the average number of hours worked per week.

(4) The overtime hours worked by each fireman during a shift cycle shall be the number of hours by which the average number of hours worked per week exceeds sixty multiplied by the number of weeks in the shift cycle.

Added by Acts 1984, No. 252, §1, eff. June 30, 1984.

D. The work cycle authorized shall consist of a nine-week cycle with a total of five hundred and four hours worked in the following tour of duty:

(1) Two days of ten hours, 8:00 a.m. to 6:00 p.m.

(2) One day of twenty-four hours, day and night, 8:00 a.m. to 8:00 a.m.

(3) Two nights of fourteen hour duty, beginning on the evening of the day in (D)(2) herein, 6:00 p.m. to 8:00 a.m.

(4) Four twenty-four hour days off.

(5) Begin tour again.

Added by Acts 1984, No. 252, §1, eff. June 30, 1984.

§ 1999. Work on holidays

Firemen in municipalities, parishes and fire protection districts who are required to work on any or all of certain legal holidays, namely Christmas, New Year's Day, July 4, Labor Day, Thanksgiving Day, and National Memorial Day, shall receive in addition to the compensation to which such employee would be under laws and pay plans now in effect, compensation at the rate of one times his usual salary, to be determined by reducing his average monthly salary to an

hourly scale; provided that in lieu of additional compensation, governing authorities, at their option, may grant fire department employees time off from work for which such additional compensation would be due and payable to said employees.

Amended by Acts 1968, No. 336, §1.